LEMBAGA KEMAJUAN NEGERI PAHANG

v.

D CHANDRAN

HIGH COURT MALAYA, TEMERLOH
VT SINGHAM JC
[ORIGINATING SUMMONS NO: 24-101-2000]
27 SEPTEMBER 2000

CIVIL PROCEDURE: *Summary possession of land - Triable issues - Whether defendant occupier a tresspaser - Whether a licensee holding over - Whether defendant entered land with consent - Whether payment of assessment fees after expiry of temporary occupation license amounted to implied consent to continue occupation - Whether a fit and proper case for O. 89 Rules of the High Court 1980*

By an originating summons the plaintiff applied under O. 89 of the Rules of the High Court 1980 ('RHC') for summary possession of certain lots of land on which the defendant resided. The plaintiff was the registered owner of the land and claimed that the defendant was a trespasser occupying the land without permission.

The defendant denied that he was a trespasser claiming he had made payment towards assessment, and that he had permission from the authorities to continue residing there. His family had been residing on the land for forty years, and there had been no action taken against them by the authorities. The defendant contended that O. 89 RHC was not the correct procedure, as he and his family went into initial occupation with permission, and there was implied consent, *ie*, the payment of assessment for their continued occupation. He contended that there were triable issues to be determined, which required a full trial.

Held:

[1] The defendant was certainly not an illegal squatter or trespasser. An inference could be made from the facts that the defendant was a family member of the licensee holding over.

[2] The plaintiff had also failed to disclose in its affidavits that the defendant entered into occupation illegally before the issuance of the temporary occupation license ('TOL') or continued to remain on the land illegally after the expiry of the TOL. The defendant's initial entry was with express consent, *ie*, the TOL, and the payment of assessment until 1998 was the implied consent, after the expiry of the TOL.

[3] The summary procedure under O. 89 RHC is not applicable in a case in which arguable issues have been raised. On the facts, and following the principle in *Shaheen Abu Bakar v. Perbadanan Kemajuan Negeri Selangor* and *Norimah Mohamed & Ors v. Bukit Lenang Development Sdn Bhd & Other Appeals*, there were *bona fide* triable issues which could not be resolved through affidavit evidence. Therefore, summary possession under O. 89 RHC was not an appropriate cause of action.

[Plaintiff's claim dismissed.]

Case(s) referred to:

Bohari Taib & Ors v. Pengarah Tanah Dan Galian Selangor [1991] 1 CLJ 647 ***(dist)***

Briston Corpn v. Persons Unknown [1974] 1 All ER 593 ***(refd)***

Caswell v. Powell Daffryn Associated Collieries Ltd [1940] AC 168 ***(refd)***

Chiu Wing Wa & Ors v. Ong Beng Cheng [1994] 1 CLJ 313 ***(refd)***

Norimah Mohamed & Ors v. Bukit Lenang Development Sdn Bhd & Other Appeals [2000] 3 CLJ 133 ***(foll)***

Salim Ismail & Ors v. Lebbey Sdn Bhd (No 2) [1997] 2 MLJ 4 ***(refd)***

Shaheen Abu Bakar v. Perbadanan Kemajuan Negeri Selangor [1998] 1 CLJ 74 ***(foll)***

Sidek Hj Muhamad & Ors v. The Government Of The State Of Perak & Ors [1982] CLJ 244 ***(dist)***

SM Appaduray & Anor v. R Ananda & Anor [1982] 1 MLJ 292 ***(foll)***

The Titular Roman Catholic Bishop Of Mallaca v. Teoh Teik Seng & Anor [1990] 2 CLJ 306 ***(foll)***

Zaibar Auto (M) Sdn Bhd & Anor v. Shell Malaysia Trading Sdn Bhd [1996] 4 CLJ 212 ***(refd)***

Legislation referred to:

National Land Code 1965, s. 425(1)

Rules of the High Court 1980, O. 89(1)

Other source(s) referred to:

Supreme Court Practice 1991, vol 1, p 1576

Reported by Suresh Nathan

JUDGMENT

VT Singham JC:

Plaintiffs' Claim For Summary Possession Under O. 89 RHC 1980

By an originating summons dated 28 April 2000, the plaintiffs applied under O. 89 of the Rules of the High Court 1980 for an order to recover the lands known as lots H.S.(D) 3194 PT No. 9528 and H.S. (D) 3195 PT No. 9529 in the Mukim Gali, District of Raub, Pahang (hereinafter referred to as "the said lots") against the defendant and occupiers of premises

known as No. 1, Batu 4, Jalan Cheroh, Raub (hereinafter referred to as "the said premises") on which the said lots there is a house constructed and known as the said premises and being occupied by the defendant and other occupiers. The grounds of the plaintiffs' application is supported by an affidavit affirmed on 19 April 2000 by En. Baharum bin Lajim, the Manager for Finance and Administration of the plaintiffs. By the first affidavit in support of their application the plaintiffs *inter alia*, have stated as follows:

Affidavit Of The Plaintiffs Dated 19 April 2000 In Support Of The Application

(a) the plaintiffs are the registered owners of the said lots and both the said lots are housing lots which is involved in a housing development of a housing project which is known as "Taman Amalina Perdana" wherein construction works are presently being carried out in the project area.

(b) according to the plaintiffs' information and knowledge, the defendant has constructed a semi-permanent building on the plaintiffs' said lots and occupying the building together with his family whose names are not known without the plaintiffs' permission, consent or agreement.

(c) the surveyor's plan with a letter dated 26 July 1999 from the Surveyors, Jurukur, Budiman which is addressed to the Developers, Amalina Holdings Sdn. Bhd. for the said Taman Amalina Perdana proves the trespass on the plaintiffs' said two lots.

(d) in the circumstances, the occupation by the defendant and his family on the said lots is illegal and they are trespassers.

(e) as evidence to the averments in the affidavit, the plaintiffs have exhibited copies of the titles, the sale and purchase agreement entered into between the plaintiffs, the developers and the purchasers in respect of the said lots and the survey plan by the said surveyors.

(f) despite several request to the defendant to demolish the illegal building and to vacate, the defendant has refused to do so. Subsequently, the plaintiffs issued a notice dated 7 March 2000 through their solicitors to the defendant but the notice was returned as "unclaimed".

(g) the defendant has still failed/refused and neglected to vacate and deliver vacant possession of the said lots to the plaintiffs.

Claim For Vacant Possession

In the circumstances, the plaintiffs prayer in the originating summons is for the plaintiffs to be granted possession of the said lots on which is situated the illegal building, the said premises which is occupied by the defendant and other persons who are occupying without permission or agreement to which the plaintiffs are entitled to possession.

Defendant's Affidavit-In-Reply Dated 6 July 2000

On the other hand, the defendant, by an affidavit affirmed on 6 July 2000 has *inter alia*, denied that he did not obtain the consent or permission from any relevant authorities to occupy and live on the said lots together with his family members. In any event, for the sake of completion, it is only appropriate to set out the summary of the reply of the defendant to the plaintiffs' first affidavit which is as follows:

(a) denies that he did not obtain the permission or consent to occupy and live together with his family on the said lots from any of the relevant authorities of the said area/location.

(b) requires the plaintiffs to prove that the defendant and his family are trespassers on the said lots and states that his status is not that of a squatter or considered as a trespasser without consent.

(c) the defendant's father and his family have lived on said lots since 40 years ago. The defendant's mother Sivakami a/p Munusamy has applied the second time in 1995 for title to the said lots after the defendant's father Dorasamy a/l Pachai had applied the first time and is still awaiting for the title to be issued as many other residents in the area have obtained the titles from the Government authorities. A copy of letter dated 29 November 1993 from the Land Office, Raub addressed to the defendant's mother Puan Sivakami a/p Munusamy of No. 1, Batu 4, Jalan Cheroh was attached which is a reply to the letter dated 26 August 1993 from the defendant's mother. The contents of the said letter is important for the purpose of this case and which is as follows:

PEJABAT TANAH
BANGUNAN PEJABAT KERAJAAN
DAERAH RAUB,
27600 RAUB.

No. Telefon: 09-351963
351964
FAX: 351344

Ruj. Tuan:
Ruj. Kami: PTR. 1/01/G/0841 (14)
Tarikh: 29 hb. November, 1993.

Puan Sivakami a/p Munusamy,
No. 1, Batu 4 Jalan Cheroh,
Raub.

Puan,

Per: Permohonan Tanah Kerajaan Seluas 4 Ekar
Di Mukim Gali Untuk Dusun

Adalah saya dengan segala hormatnya merujuk kepada surat puan bertarikh 26hb. Ogos, 1993 berhubung dengan perkara di atas.

1. Permohonan tersebut telah diberi perhatian dan akan diangkat untuk keputusan Pihak Berkuasa Negeri.

Sekian dan terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah.

(MOHAMAD NOR BIN ISMAIL, PPT.)
b.p Pentadbir Tanah Daerah,
Raub.

MMJ/mas.

(d) the defendant's father at the time when he was living in the said lots has also made payment and was in possession of Temporary Occupation Licence (TOL) from the year 1971 till the year 1985 and copies of the TOL from 1971 to 1983 was attached. Copies of the TOL for the years 1984 and 1985 were not attached to the defendant's affidavit.

(e) on 28 July 1998, he has made payment towards assessment to the District Council, Raub, namely, for July to December 1998. He wishes to stress that he has obtained the permission and agreement from the authorities to continue to reside and exhibited a copy of the receipt for the payment of the assessment.

f) the area which he is living with the permission of the authorities has infrastructure and complete facilities.

(g) the said area has been provided with the supply of electricity, water, telephone, main road and reasonable access and a temple for prayers.

(h) he has been advised that there are issues which need to be tried and witnesses have to be called for the full trial.

In the circumstances, he prays that the plaintiffs' application for summary possession be dismissed with costs.

Plaintiffs' Affidavit-In-Reply Dated 15 August 2000 To The Defendant's Affidavit In Reply Dated 6 July 2000

In reply to the defendant's affidavit, the plaintiffs have by an affidavit-in-reply affirmed on 15 August 2000 *inter alia,* stated that the area being the four acres of the land referred to by the defendant through the exhibits, the TOL is not situated in the said two lots and exhibited a copy of the survey plan prepared by the surveyors Jurukur Budiman and a letter dated 17 July 2000 from the said surveyors which *inter alia*, states that a semi permanent house, a temple and a garage situated behind the temple and some electric, telephone poles are situated in the area which is situated in respect of Taman Cheroh Perdana and the said premises known as No. 1, Batu 4, Jalan Cheroh is not situated in the said lots in the area in respect of the TOL.

Affidavit-In-Reply Of Defendant's Mother Dated 19 August 2000

However, by a further affidavit-in-reply affirmed on 19 August 2000 by the defendant's mother, Sivakami a/p Munusamy, she confirms the contents of the defendant's affidavit dated 6 July 2000 and maintains that her family have been residing on the TOL land for the past 40 years and it was with the consent of the relevant authorities and pursuant to the TOL which was approved by the Collector of Land Revenue, Raub, Pahang.

She has also stated that the position of the original house which her family is presently residing is within the boundary approved by the Collector of Land Revenue, Raub, as stated in the first TOL which was issued and renewed thereafter continuously on a yearly basis and denies all the allegations contained in both the plaintiffs' affidavits. She has also stated that throughout the material time, she and her family have not committed any breach of any of the terms or conditions as stipulated by the authorities and neither has any action been taken against her family for any breach under the law.

Application For Adjournment

On 6 July 2000, when the summons came up for hearing before this court, the plaintiffs' counsel applied for an adjournment on the ground that he had just only in the morning received the notice of appointment of solicitors of the defendant, the affidavit-in-reply dated 6 July 2000 of the defendant and the list of authorities from the defendant's solicitors and that he needed time to prepare and file an affidavit-in-reply to the defendant's

affidavit-in-reply. On hearing both the counsels on the application for the adjournment, this court adjourned the case to 16 August 2000 and finally the case was heard on 22 August 2000.

Submission Of Plaintiffs' Counsel

On 22 August 2000, counsel for the plaintiffs submitted as follows:

1) the plaintiffs are the registered owners and are entitled to possession of the said lots and referred to copies of the qualified titles which were issued on 20 April 1987 to the said lots and classified as Malay reserve.

2) the said lots are in the process of constructing housing lots and the project is known as Taman Amalina Perdana.

3) there is, the said premises which is known as No. 1, Batu 4, Jalan Cheroh, Raub which was built by the defendant and occupied by the defendant and his family.

4) the construction and occupation was without the permission or consent or agreement of the plaintiffs.

5) the notice to the defendant to vacate and demolish was issued but was returned with the reasons 'unclaimed'.

6) referred to the defendant's pleadings which states that:

   i. he is not a trespasser or squatter of the said lots on the ground *inter alia* that TOL was given to his father and mother and that the defendant has made payment towards the assessment.

   ii. there is supply of electricity, water and telephone and there is a main road and a temple in the said area.

7) the TOL that was issued was to a land near Taman Amalina Perdana and the said premises known as No. 1, Batu 4, Jalan Cheroh, Raub together with the said lots which is in dispute was never situated in the TOL area as alleged by the defendant. He referred to the plan which is attached to the TOL and shown in the defendant's affidavit-in-reply and to the surveyors' plan of the plaintiffs' surveyor with the view to show that the area as shown in the TOL has no bearing to the said lots which the plaintiffs are claiming against the defendant as occupiers of the said lots.

8) the survey plan exhibited in the affidavit of the plaintiffs clearly shows that the said premises is not situated in the said land of the TOL area and the plan which shows the said lots belonging to the plaintiffs were not at any time connected in respect of the said TOL and referred to copies of the titles for the said lots.

9) the defendant and his family when they occupied and constructed the said premises are considered as trespassers and illegal squatters on the said lots.

10) as for the payment of assessment and the receipt which was exhibited by the defendant it does not show or refer to the said premises but refers to an address known as 168 (76) Kampong Sempam Batu Raub which is not related to the subject matter, being the said premises.

11) the main road and infrastructure referred to by the defendant is the public road and highway and the supply of telephone and electricity facilities is not the criteria to show that consent has been given to the defendant by the State Government or its agencies.

In the circumstances, the plaintiffs' counsel submitted that there was no issue to go for trial as the defendant is a trespasser and the plaintiffs should be given possession as prayed in the originating summons.

Submission Of Defendant's Counsel

On the other hand, counsel for the defendant submitted as follows:

1) there is no decision taken as yet by the State Authorities on the letter dated 29 November 1993 from the Land Office, Raub which was addressed to the defendant's mother.

2) referred to the TOL exhibited to the defendant's affidvit-in-reply and submitted that there is an issue for trial.

3) referred to the affidavit-in-reply of the defendant's mother and that the said premises is part of the TOL and that it is not true that the said premises is outside the boundary of the TOL and referred to the plan attached to the TOL.

4) referred to the survey plan attached to the plaintiffs' affidavit-in-reply and submitted that one of the said lots was already in the plan attached to the TOL.

5) since 1983 there was no TOL issued to the defendant or to his family as the last issuance of the TOL according to the records was on 16 February 1983.

6) the four acres as per the large survey plan of the plaintiffs' surveyors shows encroachment of the road and bridge whereas the original plan attached to the TOL does not show any encroachment of the road or bridge. The four acres had moved place and as a result the said premises has been moved out of the TOL area.

7) according to the survey plan and as submitted by the plaintiffs' counsel, the TOL land and the said premises is outside the plan and this plan was prepared for the purpose of the housing lots after the sub-division for housing which was approved in 1987.

8) according to the TOL plan the said premises is inside when the TOL was issued.

9) assessment has been paid till December 1998 and referred to the receipt exhibited in the defendant's affidavit-in-reply.

10) Referred to the following cases:

a) *Chiu Wing Wa & Ors v. Ong Beng Cheng* [1994] 1 CLJ 313;

b) *Salim bin Ismail & Lain-Lain v. Lebbey Sdn Bhd (No 2)* [1997] 2 MLJ 4 which followed *Chiu Wing Wa* and *Bohari*'s case [1991] 1 CLJ 647.

11) there was no action taken by the Government's authorities against the defendant. The infrastructure was already there for the past many years and referred to *Bohari*'s case.

12) Order 89 RHC 1980 is basically for squatters who went into occupation without any prior consent or permission but in this case, the defendant and his family went into occupation with permission. Therefore, O. 89 is not suitable on the facts in this case.

13) the plaintiffs have failed to show that the defendant is a squatter.

14) referred to the plaintiffs' affidavit dated 19 April 2000 in support of the summons wherein the plaintiffs have stated that the defendant went into occupation without the permission of the plaintiffs and that the key word is plaintiffs and not as haram or illegal squatters and relied in *Bohari*'s case.

15) in the circumstances in this case is that, the TOL has expired in 1985 but the fact remains that the payment of assessment has been received by the State authority thereby giving express consent for the defendant and his family to stay on.

16) the plaintiffs' claim is for possession but the defendant's contention is that the defendant has entered into the land lawfully and has paid the assessment. Therefore, there are triable issues and O. 89 is not suitable and refers to *Shaheen bte Abu Bakar v. Perbadanan Kemajuan Negeri Selangor* [1998] 1 CLJ 74.

17) the defendant's initial entry was lawful from the beginning. In this case there is an express consent, ie, the issuance of the TOL and subsequently the payment of the assessment until 1998 which is an implied consent.

18) to distinguish the facts in *Shaheen*'s case which followed *Bohari*'s case and applied in *Shaheen*.

19) Refers to the following cases:

a) *Zaibar Auto (M) Sdn Bhd & Anor v. Shell Malaysia Trading Sdn Bhd* [1996] 4 CLJ 212;

b) *Norimah bte Mohamed & Ors v. Bukit Lenang Development Sdn Bhd & Other Appeals* [2000] 3 CLJ 133.

20) the plaintiffs took over the land subject to the occupation of the defendant and the said premises.

21) from the facts, in this case, and the cases referred to, O. 89 is not the proper mode of proceedings as there are triable issues as contended and submitted for the plaintiffs' summons to be dismissed with costs.

Reply – Submissions By The Plaintiffs' Counsel

1) the facts in *Bohari*'s case is not similar to the plaintiffs' case.

2) there is no express letter to the defendant from the State Government that the title will be issued to the defendant as in *Bohari*'s case and refers to the letter dated 29 November 1993 from the Land Office, Raub which was addressed to the defendant's mother to explain the difference between the facts in *Bohari*'s case and the facts in this case.

3) whether the said premises is in the area of Taman Amalina Perdana is an issue.

4) the defendant has implied by the letter dated 29 November 1983 from the Land Office Raub that he has obtained encouragement or promise although the said letter was only a reply. The titles to the area of Taman Amalina Perdana was issued in 1987 and the said letter dated 29 November 1993 did not give any promise to the defendant.

5) that the plaintiffs be granted possession as prayed in the summons.

Issue

The main issue to be determined is whether, on the facts in this case, summary possession under O. 89 Rules of the High Court 1980 is available to the plaintiffs or appropriate.

Findings By This Court

As contended by the plaintiffs' counsel, this court agrees that the facts in *Bohari*'s case is distinguishable. In that case, there was a letter dated 25 October 1980 from the Collector of Land Revenue, Sabak Bernam stating that the State Executive Council had on 4 September 1980 approved the alienation of the land occupied and carrying out farming to the appellants and other selected settlors which means that there was continued consent implied or expressed by the state authority even after the expiry of the TOL. Whereas in this case there was no such letter of approval from the state authorities in respect of the said lots.

However, in this plaintiffs' case although there is no express letter from the state authorities as in *Bohari*'s case, it could still be inferred or argued on the totality of the evidence produced by the defendant, including the reply dated 29 November 1993 from the Land Office, Raub addressed to the defendant's mother and the receipt of the payment of the assessment which was issued in the name of the defendant's father very long after the expiry of the TOL in 1985 that impliedly there was continued consent of the state authority for the defendant and his family to continue to live on the said lots. Also, this court has taken into consideration that there is no evidence that the state authority has ever taken any action or intend to take action against the defendant for alleged illegal occupation of the said lots. The failure of the state authority to take any legal action against the defendant and the failure to refuse or reject the application of the defendant's mother for the title to the said lots could be inferred to mean that there is an implied consent or acquiesance on the part of the state authority and there was legitimate expectation by the defendant that his mother would be issued with a separate title or at least will be given a favourable reply. In *Caswell v. Powell Daffryn Associated Collieries Ltd* [1940] AC 168, wherein Lord Wright said: "Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as such practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture".

In the plaintiffs' case, from the given facts, this court could infer that the defendant has been recognised as a family member of the lisensee holding over. This court finds that the defendant is certainly not an illegal squatter or a trespasser as was found in *Sidek bin Haji Muhamad & 461 Ors v. The Government Of The State Of Perak & Ors* [1982] CLJ 244.

Further, there is no explanation from the plaintiffs as to why no action was taken against the defendant immediately when the sub-division was carried out for the housing lots. Also, there is no explanation from the plaintiffs as to why no action was taken against the defendant as early as in 1987 when the separate qualified titles were issued on 20 April 1987 in favour of the plaintiffs and how the plaintiffs were able to charge the said lots to Bank Bumiputra Malaysia with the encumbrance, being the defendant's occupation on the said lots. All this factors in the view of this court tends to show that O. 89 is not the proper procedure to be adopted by the plaintiffs to evict the defendant and his family members from the said lots.

In this case, the plaintiffs **have also failed to show or disclose** in their affidavit in support or in the affidavit-in-reply that:

a) the defendant entered into or came into occupation illegally before the issuance of the TOL or continue to remain in the said lots illegally after the expiry of the TOL.

b) what is the status of the application of the defendant's mother to the state authorities which she has received response from the Land Office, Raub stating that attention has been given to her application and which will be brought for the decision of the State Executive Council.

In *Bohari*'s case, His Lordship Mohamed Azmi SCJ in delivering the judgment of the Supreme Court said:

> In our opinion, for the purpose of the summary procedure, a distinction should be made between squatters simpliciter who have no rights whatsoever, and occupiers with licence or consent, and as well as tenants and licencees holding over. It may be impossible to establish the existence of any triable issue in the case of bare squatters, but the position of tenants and licencees holding over, or persons occupying with implied or expressed consent of the owner may be different. On the facts in *Bohari*'s case, the Supreme court held that there were triable issues on the absence of either licence or consent as alleged by the respondent.

In fact, in the plaintiff's case, the defendant's counsel referred only to the High Court decision in *Shaheen* and without referring to the decision of the Federal Court, [1998] 4 MLJ 233. In *Shaheen*'s case, Zakaria Yatim FCJ who delivered the judgment of the Federal Court said: at p. 245.

Similarly in the present case, if the initial entry of the settlers on the said land was unlawful, they had committed an offence under s. 425(1) of the National Land Code. They could also be evicted under Order 89 for being squatters simpliciter. From the evidence, the state government knew of their presence on the said land from December 1981. No action was taken to charge them under the National Land Code for illegally occupying the said land. No proceeding was taken to evict them under Order 89. From January 1988 the Menteri Besar knew about the settlers. He approved the renovation of their surau. He knew that the settlers were provided with water supply, roads and a community hall. As stated earlier, when the land was given to PKNS, it knew about the settlers. In our opinion, there is an arguable case that the settlers occupied the said land with acquiesence of the State Authority.

It is important to observe that the defendant has been in occupation of the said lots with a dwelling house, a temple and a garage when the separate titles were issued to the plaintiffs on 20 April 1987 and this would tend to show that the plaintiffs took possession of the said lots with the knowledge and subject to the defendant's occupation of the said lots. On the other hand, even if this court were to follow the contention of the plaintiffs' counsel that Taman Amalina Perdana is outside the boundary or area of the defendant's TOL, this court is of the view that this issue alone is sufficent to deny the plaintiffs the summary possession as that issue cannot be determined by affidavit evidence which has exhibited plans to the affidavits but could only be decided through oral evidence and through examination and cross-examination of the parties who would be able to enlighten the court as to the exact location which is in dispute and bearing in mind that this issue in dispute was infact raised and disputed by the plaintiffs themselves which leaves this court with no choice but to disallow the summary possession. (See *SM Appaduray & Anor v. R Ananda & Anor* [1982] 1 MLJ 292.

In order to succeed in this summary procedure this court is of the view that all that was required of the plaintiffs as rebuttal evidence was to have produced a letter from the State Authority to show that the defendant's initial entry and continued occupation of the said lots was without the consent, permission or agreement of the State Authority and also to state what is the outcome of the decision of the State Executive Council in respect of the letter dated 29 November 1993 from the Land Office Raub. As this was not done by the plaintiffs, it could only lead to the inference that there is some substance in the defendant's contention or believe that he is in continued occupation of the said lots with the implied consent or permission of the State Authority who had previously issued his father with the TOL. Also, it is not unnatural for the defendant to be led to believe

that he could continue to stay on and occupy the said lots for a period and until such time he has received a reply from the Land Office, Raub as to the outcome of the decision of the EXCO although the contents as contained in the letter dated 29 November 1993 from the Land Office, Raub did not grant any blanket approval to the defendant.

In *Salim*'s case His Lordship Dato' Ahmad Fairuz JCA (as His Lordship then was and now FCJ) referred to the *Supreme Court Practice* 1991 Vol. 1 at p. 1576 which *inter alia,* states as follows:

> On the other hand, like the default and summary procedures under O. 13 and O. 14, this order would normally apply only in virtually uncontested cases or in clear cases where there is no issue or question to try, ie, where there is no reasonable doubt as to the claim of the plaintiff to recover possession of the land or as to wrongful occupation of the land without licence or consent and without any right, title or interest thereto. Where the existence of a serious dispute is apparent to a plaintiff, he should not use this procedure. If he does, the action may be struck out (*Henderson v. Law* [1984] 17 HLR 237, CA)

In *Norimah*'s case, His Lordship Gopal Sri Ram JCA said summary procedure under O. 89 is not applicable to a case in which argueable issues have been raised and this court finds that there are infact arguable issues which have been raised by both parties in this case.

For the sake of completion it is important to state the provisions of O. 89(1) RHC 1980 which reads as follows:

> 1) Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

In *The Titular Roman Catholic Bishop Of Mallaca v. Teoh Teik Seng & Anor*. [1990] 2 CLJ 306, His Lordship Wan Adnan Ismail J (as His Lordship then was, and now Chief Judge of the High Court of Malaya) in dismissing the summons for summary eviction of the plaintiffs, referred to *Briston Corporation v. Persons Unknown* [1974] 1 All ER 593 which discussed the scope of the summary eviction under O. 89 which is taken from O. 113 of the English Rules of the Supreme Court 1965.

In the circumstances, and following the principle in *Shaheen* and *Norimah* and for the reasons stated above, this court is of the view that there are *bona fide* triable issues in this case which cannot be resolved through summary procedure under O. 89 RHC 1980 and through affidavit evidence. Therefore, the originating summons for summary eviction is dismissed with costs.